

REMARKS

Claims 1 through 3, 5, 6, 10, 12 through 16, 18, and 20 have been amended.

Claims 1 through 20 remain in the application.

The drawings were objected to under 37 C.F.R. 1.83(a) because the hitch first claimed in line 3 of claim 1 must be shown or the feature canceled from the claims. Applicant respectfully traverses this objection.

FIG. 1A of the drawings shows the trailer hitch 16, which is not being claimed. Claim 1, line 3, recites that the main body allows insertion of the trailer hitch, but does not claim the trailer hitch. Therefore, FIG. 1A shows the feature of the trailer hitch and the drawings overcome the objection.

Claims 6 and 14 were objected to because of an informality in these claims.

Accordingly, claims 6 and 14 have been amended to correct the informality and maintain consistent terminology. It is respectfully submitted that claims 6 and 14 are allowable overcome the objection.

Claims 16 and 17 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Applicant respectfully traverses this rejection.

Claim 16 depends from claim 15, which recites a cover, and provides proper antecedent basis for the phrase "said cover". Claim 17 depends from claim 16. It is respectfully submitted that claims 16 and 17 are allowable over the rejection under 35 U.S.C. § 112, second paragraph.

Claims 9 and 19 have been allowed.

Claims 10, 14, and 15 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the

limitations of the base claim and any intervening claims. Claims 16 and 17 were indicated as being allowable if rewritten to overcome the rejection under 35 U.S.C. § 112, second paragraph, as set forth in this Office Action and to include all of the limitations of the base claim and any intervening claims.

Claims 10, 14, and 15 have been amended and rewritten in independent form including all of the limitations of the base claim and any necessary supporting intervening claims. Claims 16 and 17 depend from claim 15. It is respectfully submitted that claims 10 and 14 through 17 are in a condition for allowance, which allowance is solicited.

Claims 18 was rejected under 35 U.S.C. § 102(b) as being anticipated by Japanese Patent No. JP-1267191. Applicant respectfully traverses this rejection.

Japanese JP-1267191 discloses a gas pump with a cover for a pipe extending from a gas tank. Without a translation, Applicant cannot determine what else this reference discloses. Applicant respectfully requests a translation of this reference. Japanese '191 does not disclose a trailer hitch cover assembly having a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube.

In contradistinction, claim 18, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and opposed side walls extending from the front face. The hitch cover assembly also includes a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end. The main body includes a plurality of apertures extending through the sidewalls.

A rejection grounded on anticipation under 35 U.S.C. § 102 is proper only where the subject matter claimed is identically disclosed or described in a reference. In other words, anticipation requires the presence of a single prior art reference which discloses each and every element of the claimed invention arranged as in the claim. In re Arkley, 455 F.2d 586, 172 U.S.P.Q. 524 (C.C.P.A. 1972); Kalman v. Kimberly-Clark Corp., 713 F.2d 760, 218 U.S.P.Q. 781 (Fed. Cir. 1983); Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick Co., 730 F.2d 1452, 221 U.S.P.Q. 481 (Fed. Cir. 1984).

Japanese '191 does not disclose or anticipate the claimed invention of claim 18. Specifically, Japanese '191 merely discloses a gas pump with a cover for a pipe extending from a gas tank. Japanese '191 lacks a trailer hitch cover assembly having a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube. In Japanese '191, there is no trailer hitch or trailer hitch tube on a motor vehicle. Japanese '191 is not for a trailer hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application. As such, Japanese '191 fails to disclose the combination of a trailer hitch cover assembly including a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube and a movable cover plate hingedly connected to the main body to be moved between a first position and a second position for closing and opening the open end with the main body including a plurality of apertures extending through the sidewalls as claimed by Applicant. Therefore, it is respectfully submitted that claim 18 is allowable over the rejection under 35 U.S.C. § 102(b).

Claims 1, 3 through 8, 11, and 20 were rejected under 35 U.S.C. § 103 as being unpatentable over Dilk (U.S. Patent No. 4,141,569) in view of Larson (U.S. Patent No. 2,035,486). Applicant respectfully traverses this rejection.

U.S. Patent No. 4,141,569 to Dilk discloses a theft prevention device. The theft prevention device 10 includes a post 12 sized to be received in the cavity 14 of a cavity-type towing coupler 16. Device 10 includes a frame 18 for supporting post 12, the frame having a cover 20 attached by a hinge 22 to the body 24 of the frame. Dilk does not disclose a trailer hitch cover assembly including a main body having an aperture adapted fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

U.S. Patent No. 2,035,486 to Larson discloses couples for automobiles, tractors, or similar vehicles. A bracket *a* adapted to be attached to the rear of an automobile *c* as at *b*, has mounted thereon a ball *d* provided with a conical base *e* and secured in place on the bracket *a* by a nut *f*. A socket *g*, made to fit over and around the ball *d*, has a flattened horizontal shank projection *h* which is attached to the end of the draft bar *i* of the trailer *j* by bolts *k*. The socket *g* is composed of two jaw-like parts, namely, the rigid half-socket or jaw *t*, integral with the shank *h*, and the movable jaw *v* hinged to said rigid jaw *t*. A sleeve *s* slides over the jaw portions *t* and *v* and is adapted to hold the movable jaw *v* closed when the sleeve is in the position shown in Fig. 2. Larson does not disclose a trailer hitch cover assembly including a main body having an aperture adapted fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

In contradistinction, claim 1, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube. The trailer hitch cover assembly also includes an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube. The trailer hitch cover assembly further includes a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture. Claim 20 has been amended similar to claim 1 and include other features of the present invention.

The United States Court of Appeals for the Federal Circuit (CAFC) has stated in determining the propriety of a rejection under 35 U.S.C. § 103, it is well settled that the obviousness of an invention cannot be established by combining the teachings of the prior art absent some teaching, suggestion or incentive supporting the combination. See In re Fine, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 227 U.S.P.Q. 657 (Fed. Cir. 1985); ACS Hospital Systems, Inc. v. Montefiore Hospital, 732 F.2d 1572, 221 U.S.P.Q. 929 (Fed. Cir. 1984). The law followed by our court of review and the Board of Patent Appeals and Interferences is that “[a] prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art.” In re Rinehart, 531 F.2d 1048, 1051, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). See also In re Lalu, 747 F.2d 703, 705, 223 U.S.P.Q. 1257, 1258 (Fed. Cir. 1984) (“In determining whether a case of prima facie obviousness exists, it is necessary to ascertain whether the prior art teachings would appear to be sufficient to one of ordinary skill in the art to suggest making the claimed substitution or other modification.”)

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claims 1 and 20. Specifically, Dilk '569 merely discloses a theft prevention device having a frame with a post to be received in and substantially fill the socket of a trailer hitch or towing coupler. Dilk '569 lacks a trailer hitch cover assembly including a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube. In Dilk '569, the coupler 16 is not a trailer hitch tube on a motor vehicle to allow insertion of a trailer hitch therein and air, while being an insulator, is not an insulating member because it has no structure.

Larson '486 merely discloses a trailer hitch locking device in which a bracket is attached to the rear of an automobile having thereon a ball and a socket is made to fit over and around the ball is attached to the end of the draft bar of a trailer. Larson '486 lacks a trailer hitch cover assembly including a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube and an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube. Contrary to the Examiner's opinion, the tube s in Larson '486 is not a hitch tube on a motor vehicle. In FIG. 2 of Larson '486, the tube s is a portion of a tongue on a trailer. The device of Larson '486 is not for a hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application. There is no suggestion or motivation in the art to combine Dilk '569 and Larson '486 together.

The references, if combinable, fail to teach or suggest the combination of a trailer hitch cover assembly including a main body adapted to be disposed over a trailer hitch tube on a motor vehicle and adapted to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a cover plate hingedly connected to the main body and being movable between a closed

position and an open position as claimed by Applicant. The claimed invention is novel and unobvious because the trailer hitch cover assembly provides a hinged cover that may be both readily opened for receiving a trailer hitch and may be closed to protect the hitch tube. Therefore, it is respectfully submitted that claims 1 and 20 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

Claims 2 and 13 were rejected under 35 U.S.C. § 103 as being unpatentable over Japanese '191 in view of Strader (U.S. Patent No. 4,196,918). Applicant respectfully traverses this rejection.

U.S. Patent No. 4,196,918 to Strader discloses a utility trailer frame assembly. Compression members or pads 70, 72 of plastic such as nylon or other suitable material are affixed to opposite external sides of a tongue projection 28 and cooperate with stud mounting plates 34,36 rigidly to clamp therebetween the inboard ends 46',48' of leaf springs 46,48 in the extended position of a draw tongue 22 when the leaf springs are received over the mounting studs. Strader does not disclose a trailer hitch cover assembly including a main body having an aperture adapted fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture.

As to claim 2, claim 2, as amended, clarifies the invention claimed as a trailer hitch cover assembly including a main body having an open portion adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into an open end of the hitch tube. The trailer hitch cover assembly also includes a cover hingedly connected to the main body and being movable between a closed position and an open position for opening and closing the

open end. The main body includes at least one deflectable tab to retain the main body on the hitch tube.

None of the references cited, either alone or in combination with each other, teach or suggest the claimed invention of claims 1 and 20. Specifically, Japanese '191 merely discloses a gas pump with a cover for a pipe extending from a gas tank. Japanese '191 lacks a trailer hitch cover assembly having a main body for connection to a trailer hitch tube on a motor vehicle and having a front face with an opening adapted to allow passage of a trailer hitch into an open end of the hitch tube. In Japanese '191, there is no trailer hitch or trailer hitch tube on a motor vehicle and air, while being an insulator, is not an insulating member because it has no structure. Japanese '191 is not for a trailer hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application.

Strader '918 merely discloses a utility trailer frame assembly having compression pads of plastic affixed to opposite external sides of a tongue projection. Strader '918 lacks a trailer hitch cover assembly including a main body having an aperture adapted to fit over a trailer hitch tube on a motor vehicle and to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a rotatable cover plate connected to the main body and being movable between a closed position and an open position for closing and opening the aperture. In Strader '918, the hitch draw tongue 22 is not a hitch tube to allow insertion of a hitch therein and the spine 12 is not a main body having an aperture adapted to fit over a hitch tube and allow insertion of the hitch into the hitch tube. Further, the numeral 46 in Strader '918 is a leaf spring and not a deflectable tab. The device of Strader '918 is not for a hitch tube on a motor vehicle as illustrated in FIGS. 1, 3, 5, and 17 of the present application. There is no suggestion or motivation in the art to combine Japanese '191 and Strader '918 together.

The references, if combinable, fail to teach or suggest the combination of a trailer hitch cover assembly including a main body adapted to be disposed over a trailer hitch tube on a motor vehicle and adapted to allow insertion of a trailer hitch into the hitch tube, an insulating member adapted to be disposed over the hitch tube and between the main body and the hitch tube, and a cover plate hingedly connected to the main body and being movable between a closed position and an open position as claimed by Applicant. The claimed invention is novel and unobvious because the hitch cover assembly provides a hinged cover that may be both readily opened for receiving a hitch and may be closed to protect the hitch tube. Therefore, it is respectfully submitted that claims 2 and 13 and the claims dependent therefrom are allowable over the rejection under 35 U.S.C. § 103.

Claim 18 was rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of copending Application No. 09/982,619 in view of U.S. Patent No. 5,603,178 to Morrison. Claims 1, 12, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,176,506 to Blake in view of Morrison '178 and Ponder '841. Claims 1, 12, and 20 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 5,934,699 to Blake in view of Strader '918. Applicant respectfully traverses these rejections.

Although Applicant respectfully disagrees with the rejections, to further prosecution of the application, Applicant is separately filing a Terminal Disclaimer to overcome the rejections. Therefore, it is respectfully submitted that claims 1, 12, 18, and 20 are allowable over the rejections under the judicially created doctrine of obviousness-type double patenting.

Obviousness under § 103 is a legal conclusion based on factual evidence (In re Fine, 837 F.2d 1071, 1073, 5 U.S.P.Q.2d 1596, 1598 (Fed. Cir. 1988), and the subjective opinion

of the Examiner as to what is or is not obvious, without evidence in support thereof, does not suffice. Since the Examiner has not provided a sufficient factual basis, which is supportive of his/her position (see In re Warner, 379 F.2d 1011, 1017, 154 U.S.P.Q. 173, 178 (C.C.P.A. 1967), cert. denied, 389 U.S. 1057 (1968)), the rejections of claims 1 through 8, 11 through 13, 18, and 20 are improper. Therefore, it is respectfully submitted that claims 1 through 8, 11 through 13, 18, and 20 are allowable over the rejections under 35 U.S.C. § 103.

Based on the above, it is respectfully submitted that the claims are in a condition for allowance or in better form for appeal. Applicants respectfully request reconsideration of the claims and withdrawal of the final rejection. It is respectfully requested that this Amendment be entered under 37 C.F.R. 1.116.

Respectfully submitted,

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